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122
Supreme Court

November 3, 1988

Commissioner Alden H. Howard
Department of Environmental Services
Hazen Drive
Concord, New Hampshire 03301

RE: WASTEWATER TREATMENT GRANTS TO EXETER AND MONROE

Dear Commissioner Howard:

We have reviewed the inquiry of the Water Supply and Pollution Control Division concerning the proper interpretation of Chapter 111 of the Laws of 1988 which provides for certain financial and grant assistance to be made to the Towns of Exeter and Monroe.

Chapter 111 provides a mechanism for funding wastewater treatment facilities to be constructed by the Town of Exeter and Monroe. Section 1 of the Chapter provides that 80% of the costs of both projects be provided as loans to the communities, but that those loans not exceed \$4,400,000. Section 2 then assures that each town is eligible for a state contribution under RSA 149-B:1-b for the purpose of repaying the loan.

In his memorandum of September 8, 1988, John Bush, Acting Administrator of the Wastewater Engineering Bureau, requested clarification of two issues relating to this recently enacted legislation:

1. Precisely how does Chapter 111 provide for grant funds available to Exeter and Monroe to be administered pursuant to RSA 149-B:1-b? Are the Towns entitled to 20% of the entire cost of the project, or does Chapter 111 limit the grants in some manner not contemplated by RSA 149-B:1-b?

2. Must the entire amount of the grant funds allotted to each community be used to repay loans made pursuant to Chapter 111:1, or may some portion be used to reimburse the Towns for funds already expended?

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As explained below it is the conclusion of this Office that Chapter 111 requires that Exeter and Monroe shall receive state grant funds for 20% of all costs determined eligible pursuant to RSA 149-B:1-b, and that such funds must be used solely for repayment of loans made to the communities under Chapter 111.

State Contribution

Your first question raises the issue as to whether Section 1 of Chapter 111 limits any grant contribution by the State under Section 2 and RSA 149-B:1-b to 20% of the cap of \$4,400,000 in loans allowed by that Section, or whether the grant under Section 2 is for 20% of the total construction costs, even if the total exceeds \$4.4 million. Chapter 111:2 provides, in pertinent part, that the towns are "eligible for state contributions under RSA 149-B:1-b." Such specific reference to RSA 149-B:1-b incorporates the plain meaning of the terms of that provision unless the result would be illogical or inconsistent with the purpose of Chapter 111. King v. Sununu, 126 N.H. 302 (1985); State v. Kay, 115 N.H. 696 (1975).

It is our conclusion that there is no portion of RSA 149-B:1-b which is inconsistent with any portion of Chapter 111 -- the latter explicitly provides that the two towns shall receive a state contribution to construct their sewage disposal facilities, and the former precisely defines which costs associated with that construction will be reimbursed by the State as part of the 20% contribution allowed by that statute. Accordingly, then, Exeter and Monroe are entitled to a full 20% of all construction costs eligible under the plain meaning of RSA 149-B:1-b.

Repayment of Loans

The Division's second area of inquiry raises the issue of whether some portion of the State contribution under RSA 149-B:1-b may be used to reimburse Exeter and Monroe for funds expended by the Towns during design phases of their individual treatment facilities.

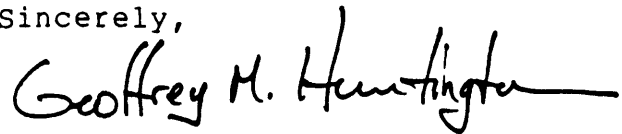
Again, the terms of the provision must be accorded their plain meaning. Therefore, the Act's statement that Exeter and Monroe are eligible for State contributions "solely for the purpose of repaying loans provided for in this act..." must be interpreted as meaning precisely that. See Chapter 111:2. Application of this provision to allow the use of any portion of the State's 20% contribution for some

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purpose other than repaying Chapter 111 loans would simply contradict the express terms of the statute.

I trust this is responsive to your inquiry. Please feel free to contact me should further questions arise.

Sincerely,

A handwritten signature in black ink, reading "Geoffrey M. Huntington". The signature is fluid and cursive, with a long horizontal stroke at the end.

Geoffrey M. Huntington
Assistant Attorney General
Environmental Protection Bureau

GMH/jlc

cc: George Mollineaux, Assistant Commissioner, DES
John Bush, WSPCD